

**STATE OF MINNESOTA  
OFFICE OF ADMINISTRATIVE HEARINGS**

**FOR THE COMMISSIONER OF HUMAN SERVICES**

In the Matter of the Revocation of the  
License of Carmen Meyer to Provide  
Family Child Care under Minnesota  
Rules, parts 9502.0300 to 9502.0445

**FINDINGS OF FACT,  
CONCLUSIONS, AND  
RECOMMENDATIONS**

This matter came on for hearing on May 20, 2004, before Administrative Law Judge Richard C. Luis (ALJ) at the Steamboat Room of the Blue Earth County Government Center, Mankato, Minnesota. The hearing record closed on May 26, 2004, after receipt of a late-filed exhibit.

Mark Lindahl, Assistant Blue Earth County Attorney, P.O. Box 3129, Mankato, Minnesota 56002-3129, appeared at the hearing as attorney for Blue Earth County (the County) and the Minnesota Department of Human Services (the Department). Carmen Meyer, 1507 North 4<sup>th</sup> Street, Mankato, Minnesota 56001, was not represented by an attorney and appeared at the hearing on her own behalf.

**NOTICES**

This Report is a recommendation, **not** a final decision. The Commissioner of Human Services will make a final decision after reviewing the administrative record, and may adopt, reject or modify these Recommendations. Under Minn. Stat. § 14.61, the final decision of the Commissioner shall not be made until this Report has been made available to the parties to the proceeding for at least ten days. An opportunity must be afforded to each party adversely affected by the Report to file exceptions and present argument to the Commissioner. Parties should contact Kevin Goodno, Commissioner, Department of Human Services, 444 Lafayette Road, St. Paul, MN 55155 to ascertain the procedure for filing exceptions or presenting argument. If the Commissioner fails to issue a final decision within 90 days of the close of the record, this report will constitute the final agency decision under Minn. Stat. § 14.62, subd. 2. The record closes upon the filing of comments, or upon the expiration of the deadline for doing so. The Commissioner must notify the parties and the Administrative Law Judge of the date on which the record closes.

**STATEMENT OF ISSUES**

(1) Whether Kevin Meyer should be disqualified from having direct contact with persons served by programs licensed by the Department; and

(2) Whether Carmen Meyer's license to provide child foster care should be revoked because of Kevin Meyer's disqualification.

Based on the evidence in the hearing record, the Administrative Law Judge makes the following:

### **FINDINGS OF FACT**

1. During all times material to this proceeding, Carmen Meyer has lived at 1507 North 4<sup>th</sup> Street, Mankato, Minnesota 56001. Her husband, Kevin Meyer, has lived there with her, as well as her two sons (ages 15 and 13). Kevin Meyer's two children do not live in the day care premises during the week. They do spend some weekends at the home. All of the children are from the prior marriages of both Kevin and Carmen Meyer.

2. Ms. Meyer has been licensed to provide family child care at her home since 1989.<sup>[1]</sup>

3. On September 28, 2002, at approximately 11:00 p.m. two officers of the Mankato Police Department responded to a report of a domestic disturbance at the Meyer home and conducted an investigation.<sup>[2]</sup> Ms. Meyer told the officers that she and her husband, Kevin Meyer, had been to bars until 8:30 p.m. When the Meyers returned home, they continued drinking and got into an argument. Kevin Meyer pushed Carmen Meyer up against a wall and slapped or punched her several times. The officers observed red marks on Carmen Meyer's face and chest. She also told them that Kevin Meyer had poured a beer over her head. The officers observed a wet spot on the couch that matched Carmen Meyer's description of that part of the incident.

4. At the conclusion of the officers' investigation, the matter was referred to the Mankato City Attorney.<sup>[3]</sup> The City Attorney declined to charge Kevin Meyer for misdemeanor domestic assault.<sup>[4]</sup> The City Attorney noted his reasons as follows:

This is a difficult case to deny. The Officer has done all that was required. There is probable cause for the Assault charge. However, victim does not want to see charges pursued. Further, the D [Defendant] has a clean record. He has had no problems since this incident. Also, the D had no involvements with the police as a suspect prior to this incident.<sup>[5]</sup>

5. Ms. Meyer's family child care program came up for relicensure in 2003. The Blue Earth County Human Services Department (the County) began the relicensure process which consisted, among other things, of background studies of Ms. Meyer, her husband, and all other persons above 13 years of age living in the daycare premises.<sup>[6]</sup>

6. On February 20, 2003, the required background study on Mr. Meyer was completed. The background study indicated that Mr. Meyer was disqualified from contact with daycare children due to his conduct on September 28, 2002.<sup>[7]</sup> This conduct was described as meeting the definition of Domestic Abuse under Minn. Stat. § 609.2242. The County concluded that Mr. Meyer had, by a preponderance of the evidence, been shown to have committed an act meeting the definition of Domestic Assault.

7. The February 20, 2003 notification described the appeal process for the disqualification determination. Kevin Meyer submitted a request for reconsideration of the disqualification. The County recommended to the Commissioner of Human Services that the disqualification be set aside.<sup>[8]</sup> On March 20, 2003, the Department notified both Mr. and Ms. Meyer that Kevin Meyer was disqualified from direct contact with persons served by programs licensed by the Department because of his conduct that meets the definition of Domestic Assault. The Department concluded that a variance for one year was appropriate to address the disqualification, subject to the following conditions.

- 1) That there are no other disqualifying factors;
- 2) That there are no recurrences of the same or similar incidents;
- 3) That you are not used as a substitute caregiver; and
- 4) That you are not allowed unsupervised contact with children in care.<sup>[9]</sup>

8. On April 26, 2003, at approximately 9:30 a.m. two officers of the Mankato Police Department responded to a call reporting a domestic assault taking place over the previous five days at Ms. Meyer's home. When the officers arrived, they conducted an investigation.<sup>[10]</sup> Ms. Meyer told the officers that Kevin Meyer had punched her in the face while they were in their car on April 20, 2003. On the night of April 25, 2003, the Meyers began arguing again at the house. Kevin Meyer grabbed her and threw her to the kitchen floor. After Ms. Meyer retaliated (by knocking Kevin Meyer out of his chair), Kevin Meyer again threw Ms. Meyer to the floor, injuring her right leg and knee in the process. Kevin Meyer poured beer or soda on Ms. Meyer while she was on the floor. He also pulled her hair. Ms. Meyer was fearful of further assault by Kevin Meyer and left the premises. She remained away until later that night when she returned to the premises and slept in her son's bedroom. Ms. Meyer's sister came over in the morning (April 26), and upon hearing about the incident, told Mr. Meyer to leave. When he refused, Ms. Meyer's sister called the police. The officers noted that Carmen Meyer was limping and that her scalp hurt from having her hair pulled during the incident on the previous day.

9. At the conclusion of the officers' investigation, the case was referred to the Mankato City Attorney.<sup>[11]</sup> The City Attorney charged Kevin Meyer with misdemeanors for domestic assault and disorderly conduct.<sup>[12]</sup> Kevin Meyer pled guilty to misdemeanor

disorderly conduct on July 21, 2003. Mr. Meyer was sentenced to ten days in jail, stayed for one year, on condition that:

- a. he pay a fine of \$187.00;
- b. he attend and successfully complete counseling and treatment; and
- c. he provide verification to the City Attorney concerning that counseling.<sup>[13]</sup>

10. Blue Earth County Human Services was made aware of the April 2003 incident. On October 16, 2003, the County passed on its determination to the Commissioner of Human Services that there was a preponderance of evidence showing that Mr. Meyer committed assault in the April 2003 incident.<sup>[14]</sup>

11. On October 14, 2003, the County notified Mr. Meyer that a new background study on him had been completed. This background study indicated that Mr. Meyer was disqualified from contact with daycare children due to the incident described as occurring on April 25, 2003.<sup>[15]</sup> This conduct was described as meeting the definition of Domestic Abuse under Minn. Stat. § 609.2242. The County concluded that a preponderance of the evidence showed Mr. Meyer committed an act meeting the definition of Domestic Assault. The disqualification took effect immediately. Mr. Meyer was informed how to request reconsideration of the disqualification.

12. On November 17, 2003, the County informed the Department that both Mr. and Ms. Meyer were aware of Kevin Meyer's disqualification and that reconsideration had not been requested.<sup>[16]</sup> The County recommended that the disqualification not be set aside and no variance be granted.

13. On November 24, 2003, Mr. Meyer requested that the Department reconsider his disqualification.<sup>[17]</sup> In his request, Mr. Meyer recited a number of facts about the incident that, in his opinion, make disqualification inappropriate. That no children were present, that the incident transpired between the two of them alone, and recent changes in Ms. Meyer's health were all cited as reasons to not impose disqualification. Mr. Meyer also noted that he was actively involved in counseling, "once or twice a month since the incident."<sup>[18]</sup> Mr. Meyer related that he was not on the premises "during almost all of her daycare hours."<sup>[19]</sup>

14. On February 11, 2004, the Department issued a letter to Mr. Meyer denying his request for removal of his disqualification. The denial was based on findings that Mr. Meyer had committed fifth degree domestic assault on September 27, 2002 and April 25, 2003.<sup>[20]</sup> The Department concluded that Mr. Meyer had a disqualifying characteristic and that he had failed to demonstrate that he did not pose a risk of harm to persons served by Ms. Meyer's child care program.<sup>[21]</sup>

15. By an Order of Revocation issued on February 11, 2004, the Department revoked Ms. Meyer's family child care license because her husband had a disqualification and was living in the day care residence.<sup>[22]</sup>

16. On February 17, 2004, Ms. Meyer appealed the Department's Order of Revocation.<sup>[23]</sup> In her appeal letter, Ms. Meyer indicated that Mr. Meyer had not been convicted of domestic assault on either occasion, that they were complying with the terms of the variance, that Mr. Meyer had no contact with daycare children, that the two incidents happened outside of daycare hours, and that Ms. Meyer's health situation had been a significant contributing factor to the two incidents.<sup>[24]</sup> The Commissioner issued the Notice of and Order for Hearing on February 25, 2004 that initiated this contested case proceeding.

17. Mr. Meyer is currently participating in a domestic violence counseling program.<sup>[25]</sup>

18. The parents of children in Ms. Meyer's care consider her to be an excellent child care provider and an asset to the children in her care.<sup>[26]</sup>

19. No child in Ms. Meyer's care has suffered injury or harm as a result of her care, nor has she provided substandard care to a child in care.

20. These Findings are based on all of the evidence in the record. Citations to portions of the record are not intended to be exclusive references.

21. The Memorandum that follows explains the reasons for these Findings of Fact, and to the extent that the Memorandum may contain additional findings of fact, including findings on credibility, the Administrative Law Judge incorporates them into these Findings.

22. The Administrative Law Judge adopts as Findings any Conclusions that are more appropriately described as Findings.

Based upon these Findings of Fact, the Administrative Law Judge makes the following:

## **CONCLUSIONS**

1. Minnesota law gives the Administrative Law Judge and the Commissioner of Human Services authority to conduct this contested case proceeding and to make findings, conclusions, and recommendations or a final order, as the case may be.<sup>[27]</sup>

2. The Department and the County gave proper and timely notice of the hearing, and it has also fulfilled all procedural requirements of law and rule so that this matter is properly before the Administrative Law Judge.

3. This is "a consolidated contested case hearing for sanctions based on . . . disqualifications" within the meaning of Minnesota Statutes, section 245A.08, subdivision 2a. The scope of this contested case proceeding therefore includes appeals from Mr. Meyer's disqualification and from the Department's revocation of Ms. Meyer's family child care license.

4. Minnesota Statutes, section 245C.15, subd. 4(a)(2), provides that a person convicted of domestic assault<sup>[28]</sup> must be disqualified from having access to a person receiving services from a license holder if the person so convicted is a person “age 13 or older living in the household where the licensed program will be provided.”<sup>[29]</sup>

5. Minnesota Statutes, section 245C.14, subd. 1(a)(2), provides that a person will be disqualified where “a preponderance of the evidence indicates the individual has committed an act or acts that meet the definition of any of the crimes listed in section 245C.15 ... .”

6. The Department has the burden of establishing by a preponderance of the evidence that Kevin Meyer has committed an act or acts meeting the definition of domestic assault and is also a person age 13 or older living in the household where Ms. Meyer provides licensed child care services.<sup>[30]</sup>

7. Kevin Meyer has been convicted of disorderly conduct for violent actions against Ms. Meyer that meet the definition of domestic assault. He is a person age 13 or older living in the household where Ms. Meyer provides licensed child care services. He is therefore disqualified from having access to persons receiving child care services from his wife.

8. When seeking reconsideration of disqualification, Minnesota Statutes, section 245C.21, subd. 3, provides in pertinent part that “[t]he individual must present information showing that:

(1) the information the commissioner relied upon in determining the underlying conduct that gave rise to the disqualification is incorrect;

\* \* \*[or]

(3) the subject of the study does not pose a risk of harm to any person served by the applicant, license holder, or registrant.

An individual seeking reconsideration and removal of a disqualification has the burden of establishing by a preponderance of the evidence that one or both of those conditions exist.

8. Minnesota Statutes, section 245C.22, subd. 2 allows the Commissioner of Human Services to rescind the disqualification if the Commissioner finds that the information relied on to disqualify the subject is incorrect.

9. Minnesota Statutes, section 245C.22, subd. 4 allows the Commissioner to rescind the disqualification if the subject does not pose a risk of harm to persons served by the license holder. The Commissioner must consider:

(1) the nature, severity, and consequences of the event or events that led to the disqualification;

- (2) whether there is more than one disqualifying event;
- (3) the age and vulnerability of the victim at the time of the event;
- (4) the harm suffered by the victim;
- (5) the similarity between the victim and persons served by the program;
- (6) the time elapsed without a repeat of the same or similar event;
- (7) documentation of successful completion by the individual studied of training or rehabilitation pertinent to the event; and
- (8) any other information relevant to reconsideration.<sup>[31]</sup>

10. When reconsidering disqualification the Commissioner is required to “give preeminent weight to the safety of each person served by the license holder, applicant, or registrant over the interests of the license holder, applicant, or registrant.”<sup>[32]</sup>

11. Mr. Meyer failed to establish by a preponderance of the evidence that the information the Commissioner relied upon in determining that the underlying conduct giving rise to the disqualification occurred was incorrect. Mr. Meyer also failed to establish by a preponderance of the evidence that he does not pose a risk of harm to any person served by his wife’s licensed family child care program. Since Mr. Meyer failed to establish a basis for either mandatory or permissive removal of his disqualification by the Commissioner, his disqualification should not be rescinded or set aside.

12. Minnesota Rules, part 9502.0335, subpart 6, provides, in part, that:

[a]n applicant or provider shall not be issued a license or the license shall be revoked, not renewed, or suspended if the applicant, provider, or any other person living in the day care residence or present during the hours children are in care, or working with children:

\* \* \*

D. Has a disqualification under Minnesota Statutes, section 245A.04, subd. 3d.<sup>[33]</sup>

13. Since a person having a disqualification that was not set aside lives in Ms. Meyer’s day care residence, it is appropriate for the Commissioner to revoke her family child care license.

14. The Administrative Law Judge adopts as Conclusions any Findings that are more appropriately described as Conclusions.

15. The Memorandum that follows explains the reasons for these Conclusions, and the Administrative Law Judge therefore incorporates that Memorandum into these Conclusions.

Based upon the these Conclusions, and for the reasons explained in the accompanying Memorandum, the Administrative Law Judge makes the following:

### **RECOMMENDATION**

(1) That the Commissioner of Human Services AFFIRM the Department's decision to DENY reconsideration of the disqualification of Kevin Meyer; and

(2) AFFIRM the Department's Order of Revocation dated February 11, 2004, and REVOKE the license of Carmen Meyer to provide family child care.

Dated this 18<sup>th</sup> day of June 2004.

/s/ Richard C. Luis

RICHARD C. LUIS

Administrative Law Judge

Reported: Tape Recorded (two tapes); No Transcript Prepared.

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### **NOTICE**

Under Minnesota law,<sup>[34]</sup> the Commissioner of Human Services is required to serve his final decision upon each party and the Administrative Law Judge by first-class mail.

### **MEMORANDUM**

The Licensee blames much of the two incidents of assault on her own medical condition. She asserts that the escalations into violence were provoked, in part, by her difficult behavior/temperament caused by a glandular disorder which is now being treated correctly. She testified that the disorder made her so argumentative and obnoxious that any reasonable person could be provoked to violence. The cause of the arguments is irrelevant to this licensing proceeding. Kevin Meyer is an adult, living in the daycare premises, who has engaged in two separate instances of assaultive behavior. This behavior is a disqualifying characteristic. The record does not establish that Kevin Meyer acted in self-defense, nor is there medical evidence to corroborate Ms. Meyer's testimony regarding the cause of her aberrant personality.



Mr. and Ms. Meyer assert that no assaultive behavior occurred in front of daycare children and that no such behavior would occur with those children present. Mr. Meyer was afforded the benefit of the doubt on the first disqualification. A variance was granted on March 20, 2003, allowing Mr. Meyer to remain in the daycare premises, subject to four conditions. On April 25, Mr. Meyer violated two of the conditions, by again assaulting Ms. Meyer. This assaultive behavior caused injury, caused Ms. Meyer to leave premises, and prompted a call to the police on the following morning due to continued strife and fear of additional assaultive behavior. The circumstances surrounding this behavior compel a conclusion that Mr. Meyer cannot be trusted at this time to prevent a recurrence of such behavior in the future.

The record in this matter demonstrates that Mr. Meyer poses a risk of harm to both Ms. Meyer and the daycare children. Mr. Meyer had been aware of the negative consequences of his behavior, both in the potential for criminal prosecution and negative action against Ms. Meyer's day care license. Nevertheless, he engaged in physically assaultive behavior on April 25, 2003 that left visible evidence of injury. A similar loss of control around the daycare children would cause them emotional harm, even if the daycare children were not the object of Mr. Meyer's outburst. His inability to control his behavior on April 25, 2003, does not support a finding that he can now be trusted to avoid the behavior.

Mr. Meyer maintains that he will not be present during daycare hours. As a matter of ongoing practice, the Department has declined to accept a lack of actual contact by a recently disqualified person who resides in the residence as a reason to provide a variance for a daycare licensee. Where an ongoing demonstration of proper behavior has been maintained, such a variance has been considered. For the reasons discussed above, no such demonstration has been made in this matter. The assertion that Mr. Meyer will not be on the premises during daycare hours relies upon Mr. Meyer's acting in accordance with the same standards that he violated and for which he has been disqualified.<sup>[35]</sup> The Department is entitled to consider the demonstrated pattern of domestic discord in concluding that Mr. Meyer poses a risk of harm to children under Ms. Meyer's care.

The ALJ has considered the factors listed in Minn. Stat. § 245C.22, subd. 4(b) in determining whether Kevin Meyer poses a "risk of harm." Most troublesome are that only seven months' time passed between the incidents of assault and that Mr. Meyer has not yet completed his domestic counseling with Lutheran Social Services.

Under the law, Ms. Meyer bears the burden at the hearing of establishing by a preponderance of the evidence that Mr. Meyer "does not pose a risk of harm to any person served by ... license holder."<sup>[36]</sup> In this case, the ALJ has concluded that the evidence in this record falls short of meeting that burden. Mr. Meyer has two instances in the recent past of assaultive behavior resulting in injury to Ms. Meyer. He is properly disqualified from contact with day care children. Mr. Meyer continues to live in the day care premises. Revocation of Ms. Meyer's daycare license is appropriate due to that circumstance.

R.C.L.

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- [1] Testimony of Carmen Meyer.
- [2] Exhibit 1.
- [3] Exhibit 1.
- [4] Minn. Stat. § 609.2242, subd. 1.
- [5] Exhibit 1.
- [6] Minn. Stat. § 245A.04, subd. 3(c)(2).
- [7] Exhibit 2.
- [8] Exhibit 3.
- [9] Exhibit 4.
- [10] Exhibit 6.
- [11] Exhibit 6.
- [12] Exhibit 7; Minn. Stat. §§ 609.2242, subd.1 and 609.72.
- [13] Exhibit 8.
- [14] Exhibit 9.
- [15] Exhibit 10.
- [16] Exhibit 11.
- [17] Exhibit 12.
- [18] Exhibit 12.
- [19] Exhibit 12; *see also* Exhibit 20A.
- [20] Exhibit 15.
- [21] *Id.*
- [22] Exhibit 14.
- [23] Exhibit 16.
- [24] Exhibit 16.
- [25] Exhibit 20A.
- [26] Exhibits 17 and 18.
- [27] Minn. Stat. §§ 14.50, 14.57, 14.69, and 245A.01 through 245A.16.
- [28] Minn. Stat. § 609.2242,
- [29] Minn. Stat. § 245A.04, subd. 3 (c) (2).
- [30] Minn. Stat. § 256.045, subd. 3.
- [31] Minnesota Statutes, section 245C.22, subd. 4(b).
- [32] Minnesota Statutes, section 245C.22, subd. 3.
- [33] Minn. Stat. § 245A.04, subd. 3d, cross-references the disqualification process at Minn. Stat. §§ 245C.14 and 245C.15.
- [34] Minn. Stat. § 14.62, subd. 1.
- [35] *See* Minn. Stat. § 245A.04, subd. 3d(a)(4).
- [36] Minn. Stat. § 245A.04, subd. 3b (a).